

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
MARITEL SOUTHERN PACIFIC, INC.	)	File No. 0003743672
	)	
Assignment of Authorization to the County of	)	
Riverside, California	)	
	)	
MOTOROLA SOLUTIONS, INC.	)	
	)	
Request for Clarification	)	

**ORDER**

**Adopted: September 10, 2012**

**Released: September 11, 2012**

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* On May 19, 2009, MariTEL Southern Pacific, Inc (MariTEL) filed the above-captioned application for consent to partition and disaggregate a portion of its geographic license for VHF Public Coast (VPC) Station WPOJ536 to the County of Riverside, California (Riverside).<sup>1</sup> Riverside also filed a contingent request for waiver of Part 80 of the Commission's Rules, if deemed necessary, to permit it to use the frequencies for its public safety communication system.<sup>2</sup> For the reasons that follow, we grant the waiver to the extent necessary and will process the application.

2. *Background.* In 2007, the Wireless Telecommunications Bureau's Mobility Division (Division) substantially granted the applications of MariTEL and related entities for consent to partition and disaggregate portions of sixteen VPC geographic licenses, including Station WPOJ536, to Motorola, Inc. (Motorola) and corresponding requests for waivers to permit Motorola to provide this spectrum to third parties to satisfy public safety and other first responder requirements.<sup>3</sup> The assignment applications were granted on the conditions that operations would not cause harmful interference to current or future marine communications, including but not limited to Automatic Identification System (AIS)<sup>4</sup> operations; and operation would not be conducted at locations within thirty miles of a coastline or major waterway.<sup>5</sup>

<sup>1</sup> File No. 0003743672 (filed May 19, 2009).

<sup>2</sup> See *id.*, Description of Application at 8.

<sup>3</sup> See Motorola, Inc., *Order*, 22 FCC Rcd 579 (*Motorola Order*), *recon. dismissed, Order on Reconsideration*, 22 FCC Rcd 18649 (WTB MD 2007), *review denied, Memorandum Opinion and Order*, 25 FCC Rcd 455 (2010), *recon. dismissed, Order on Reconsideration*, 26 FCC Rcd 16581 (2011), *recon. pending*.

<sup>4</sup> AIS is an international maritime navigation safety communications system adopted by the International Maritime Organization and Safety of Life at Sea Convention intended for collision avoidance, monitoring and tracking. See generally, e.g., Amendment of the Commission's Rules Regarding Maritime Automatic Identification Systems, *Second Report and Order*, WT Docket No. 04-344, 23 FCC Rcd 13711 (2008).

<sup>5</sup> *Motorola Order*, 22 FCC Rcd at 585 ¶ 13. In 2011, Motorola sought clarification that the restriction of operating within thirty miles of a coastline or major waterway applies only to operations of base station locations and that users may operate mobile or portable radios within these setback areas. See Letter dated Oct. 7, 2011 from Chuck Powers, Director, Engineering and Technology Policy, Motorola Solutions, Inc. to Rick Kaplan, Chief, Wireless

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MariTEL retained all of its VPC spectrum in areas within thirty miles of coastlines and other major waterways.<sup>6</sup> Later in 2007, the Division granted Motorola's application for consent to assign VPC spectrum to Riverside in the eastern two-thirds of the county and small portions of adjacent counties, to permit Riverside to upgrade its public safety communications system.<sup>7</sup>

3. Also in 2007, the Commission amended the Part 80 rules to afford VPC licensees additional operational flexibility to provide service to units on land.<sup>8</sup> Specifically, the Commission provided that VPC licensees could use the spectrum for private land mobile radio (PLMR) service, provided that certain conditions are met, including complying with Part 80 technical limits and providing priority for marine-originating communications.<sup>9</sup>

4. In 2009, MariTEL filed the instant application for consent to partition and disaggregate a portion of the license for Station WPOJ536 to Riverside in the southwestern portion of the county and small portions of adjacent counties running to the Pacific coastline.<sup>10</sup> Riverside seeks this spectrum in order to finish upgrading its public safety communications system where it currently lacks sufficient spectrum.<sup>11</sup> Riverside asserts that its application is similar to those of other public safety entities that obtained VPC spectrum from MariTEL to enhance their public safety communications systems.<sup>12</sup> It proposes to minimize the impact on maritime communications along the Pacific coastline by system design and not using frequencies that are immediately adjacent to AIS spectrum.<sup>13</sup> Riverside states that it will comply with Part 80 equipment and power level requirements, and that MariTEL will be responsible for meeting the Part 80 operational requirements including providing priority to marine-originating communications and keeping watch on marine VHF channel 16.<sup>14</sup>

5. The assignment application went on public notice on May 27, 2009.<sup>15</sup> Objections were

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Telecommunications Bureau, at 3. We do not agree with this interpretation. As expressly provided in the *Motorola Order*, land mobile operations may not be conducted at locations within thirty miles of a coastline or major navigable waterway. This includes both base stations and mobile operations. Consequently, we deny Motorola's clarification request.

<sup>6</sup> *Motorola Order*, 22 FCC Rcd at 580 ¶ 2.

<sup>7</sup> File No. 0003217461 (filed Nov. 15, 2007). Riverside is an inland county in California that runs from Orange County to the Arizona state line.

<sup>8</sup> MariTEL, Inc. and Mobex Network Services, LLC, *Report and Order*, WT Docket No. 04-257, 22 FCC Rcd 8971 (2007) (*Flexibility Order*), *on recon.*, *Memorandum Opinion and Order*, 25 FCC Rcd 533 (2010), *recon. denied*, *Order on Reconsideration*, 26 FCC Rcd 2491, *review dismissed*, *Second Memorandum Opinion and Order*, 26 FCC Rcd 16579 (2011).

<sup>9</sup> See 47 C.F.R. § 80.123. VPC stations are presumptively treated as commercial mobile radio service providers. See 47 C.F.R. § 20.9(a)(5). VPC licensees are permitted, however, to file applications to dedicate a portion of their licensed spectrum for private mobile radio service (PMRS), and may be regulated as PMRS providers upon certifying that they will so operate. See 47 C.F.R. § 20.9(b).

<sup>10</sup> Specifically, MariTEL seeks consent to partition and disaggregate three 12.5 kHz channel pairs, channel 484 (157.225/161.825 MHz), channel 425 (157.250/161.850 MHz) and channel 485 (157.275/161.875 MHz).

<sup>11</sup> See File No. 0003743672, Description of Application at 2, 5.

<sup>12</sup> *Id.* at 3-5 (citing, e.g., County of Placer, *Order*, 20 FCC Rcd 3657 (WTB PSCID 2005); Commonwealth of Virginia, *Order*, 19 FCC Rcd 15454 (WTB PSCID 2004)).

<sup>13</sup> *Id.* at 7-8.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Public Notice*, Report No. 4985 (WTB rel. May 27, 2009).

filed by the National Telecommunications and Information Administration (NTIA) and the United States Coast Guard (Coast Guard);<sup>16</sup> the Radio Technical Commission for Maritime Services (RTCM);<sup>17</sup> BoatUS;<sup>18</sup> and Environmental LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, Intelligent Transportation & Monitoring Wireless LLC, and Skybridge Spectrum Foundation (collectively, Havens Petitioners).<sup>19</sup> Motorola, which is Riverside's equipment vendor, and MariTEL filed pleadings in support of the application.<sup>20</sup>

6. *Discussion.* The Havens Petitioners argue that the application should be dismissed, denied, or held in abeyance due to questions about the basic character qualifications of Donald DePriest and for other reasons unrelated to the assignment of VPC spectrum to Riverside.<sup>21</sup> In other matters involving MariTEL applications, we recently held that the issues raised by the Havens Petitioners do not, under the Commission's policies, constitute grounds to defer processing of MariTEL applications.<sup>22</sup> Consequently, we deny the Havens Petitioners' petition.

7. Riverside argues that the assignment application should be granted because it will operate

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<sup>16</sup> Letter dated Aug. 4, 2009 from Karl B. Nebbia, Associate Administrator, Office of Spectrum Management, NTIA to Julius Knapp, Chief, Office of Engineering and Technology, Federal Communications Commission (NTIA Letter). Attached to the NTIA Letter was a letter from the Coast Guard opposing the application. Letter dated July 30, 2009 from Joseph D. Hersey, Jr., U.S. Coast Guard, Chief, Spectrum Management Division, to Karl B. Nebbia, Associate Administrator, Office of Spectrum Management, NTIA (Coast Guard Letter). While the NTIA Letter was filed after the deadline for petitions to deny, *see* 47 C.F.R. § 1.948(j) (petitions to deny assignment applications are due within fourteen days of the date of the public notice listing the application as accepted for filing [June 10, 2009, in this case]), we conclude that it is in the public interest to accept the NTIA and Coast Guard Letters in order to address the matters of homeland security and maritime safety that they raise.

<sup>17</sup> RTCM requested an extension of time to file comments, Letter dated June 9, 2009 from R.L. Markle, President, RTCM, to Federal Communications Commission, and late-filed comments, Comments (filed June 26, 2009) (RTCM Opposition). OWA, Inc. (OWA) also requested an extension of time to file comments. *See* Letter from Charles B. Husick, President, OWA, to Federal Communications Commission (filed May 29, 2009). MariTEL filed an opposition to the extension requests. Opposition (filed June 15, 2009) (MariTEL Opposition to Late Filings). RTCM filed a reply. RTCM's Opposition to the Opposition of MariTEL, Inc. (filed July 24, 2009). Because OWA did not file comments, its extension request is moot. We conclude that it is in the public interest to accept the RTCM Opposition to facilitate the development of a full record.

<sup>18</sup> Comments (filed June 26, 2009).

<sup>19</sup> Petition to Dismiss or Deny, or in the alternative Section 1.41 Request (filed June 10, 2009) (PTD). MariTEL filed an opposition. Opposition (filed June 19, 2009). The Havens Petitioners filed a supplement. May 27, 2010 Supplement – New Facts, And Request to Accept (filed May 27, 2010).

<sup>20</sup> Motorola and MariTEL filed oppositions to the NTIA and Coast Guard Letters. Opposition of Motorola, Inc. (filed Aug. 28, 2009) (Motorola Opposition); Opposition of MariTEL, Inc. (filed Aug. 31, 2009) (MariTEL Opposition). Motorola also filed a supplemental pleading. Request to Supplement Record (filed Apr. 12, 2010) (Supplement). RTCM requested an extension of time to reply to the Supplement. Request for Time Extension to Evaluate Motorola's Request to Supplement Record (filed Apr. 23, 2010). Motorola opposed the request, Opposition to Request for 90-Day Extension (filed Apr. 27, 2010), and RTCM filed a reply, Response to Motorola's "Opposition to Request for 90-Day Extension" (filed Apr. 30, 2010). The Division granted the extension request in part. *See* Electronic mail dated Apr. 30, 2010 from Scot Stone to RTCM – Bob Markle (granting 30-day extension). RTCM filed a response to the Supplement on behalf of itself and constituent members BoatUS and OWA. Response to Motorola's Request to Supplement Record (filed May 21, 2010) (RTCM Response to Supplement).

<sup>21</sup> *See* PTD at 3-7.

<sup>22</sup> *See* MariTEL Northern Pacific, Inc., Order, 27 FCC Rcd 8153, 8154 ¶ 6 (WTB MD 2012), *recon. pending*; MariTEL Mississippi River, Inc., 27 FCC Rcd 7676, 7676 ¶ 1 (WTB MD 2012), *recon. pending*; MariTEL, Inc., Order, 27 FCC Rcd 3256, 3259-62 ¶¶ 7-14 (WTB MD 2012), *recon. and review pending*.

in compliance with Part 80.<sup>23</sup> NTIA, Coast Guard, and RTCM argue that the instant application is inconsistent with prior Commission actions allowing use of VPC spectrum for public safety operations in that Riverside's proposed operations will impair maritime communications and safety.<sup>24</sup> First, they argue that we should not allow VPC spectrum to be used for PLMR operations along the Southern California coast, which is a critical maritime area that includes two of the busiest and most congested ports in the world (Los Angeles and Long Beach).<sup>25</sup> We note, however, that after the instant application was filed we granted a similar application to permit MariTEL to assign VPC spectrum to electric utility PacifiCorp along the Columbia River and the Pacific Coast in Oregon and Washington,<sup>26</sup> an area that includes six of the busiest ports in the United States.<sup>27</sup> The area of the proposed assignment thus is not itself a reason to reject the transaction.

8. Coast Guard and RTCM argue that use of the proposed channels for land mobile operations will result in insufficient spectrum to support future maritime broadband services that protect the safety of navigation, life and property in Southern California.<sup>28</sup> Riverside, however, is requesting fewer VPC channels than MariTEL assigned to PacifiCorp.<sup>29</sup> We concluded that the spectrum retained for VPC use in the Pacific Northwest appeared sufficient to accommodate maritime needs,<sup>30</sup> so the record does not support the argument that there will not be sufficient VPC spectrum to serve maritime communications needs in Southern California.<sup>31</sup>

9. Parties opposing the application also argue that the condition imposed on prior assignments of VPC spectrum for PLMR use – that no interference be caused to current or future marine communications, including but not limited to AIS operations – is not adequate to protect critical maritime communications along the Southern California coast.<sup>32</sup> Coast Guard offers a technical propagation analysis to demonstrate that Riverside's high-site base stations would cause harmful interference to maritime communications by making channels 84, 25 and 85 unusable for approximately 48,000 square kilometers off of Southern California and along the coastline from Santa Barbara to Mexico.<sup>33</sup>

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<sup>23</sup> See Description of Application at 8; see also MariTEL Opposition to Late Filings at 3-4.

<sup>24</sup> See NTIA Letter at 2; Coast Guard Letter at 4; RTCM Opposition at 2-4.

<sup>25</sup> NTIA Letter at 2; Coast Guard Letter at 1.

<sup>26</sup> See PacifiCorp, *Order*, 24 FCC Rcd 5796 (WTB MD 2009) (*PacifiCorp Order*).

<sup>27</sup> See PacifiCorp, *Order*, 21 FCC Rcd 7762, 7764 ¶ 6 (WTB PSCID 2006).

<sup>28</sup> See Coast Guard Letter at 8-9; RTCM Opposition at 6; RTCM Response to Supplement at 2.

<sup>29</sup> *PacifiCorp Order*, 24 FCC Rcd at 5796 ¶ 2.

<sup>30</sup> *Id.* at 5799 ¶ 9. As Riverside notes, in addition to the VPC spectrum to be retained by MariTEL in Southern California, AT&T is licensed to provide maritime services in the area on channels 24, 26, 86, and 28. See Description of Application at 7; Licenses for Stations KMB393 and KMB394.

<sup>31</sup> Motorola believes that Coast Guard has overstated the need for maritime spectrum in Southern California. It notes that Coast Guard cites demand for approximately ten million mariners for the spectrum but does not provide specifics, e.g., actual number of users, traffic generated or, how many of those mariners are affected by the instant application. See Motorola Opposition at 20; MariTEL Opposition at 5; Supplement at 15.

<sup>32</sup> See, e.g., NTIA Letter at 2.

<sup>33</sup> Coast Guard Letter at 6-7; see also Attachment 1 attached to Coast Guard Letter; RTCM Response Supplement at 5. Motorola replies that Coast Guard's estimates of interference are overstated because the Coast Guard used incorrect technical specifications. See Motorola Opposition at 17 - 18. Because Riverside's request for waiver did not provide complete technical information regarding its base stations, Coast Guard assumed what it believes are reasonable technical parameters designed to provide good land mobile coverage. Its technical analysis assumes 50

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10. These concerns are premature. Riverside's system is engineered to minimize the impact on maritime communications.<sup>34</sup> For example, radiated power will be decreased to the lowest level possible consistent with Riverside's coverage requirements, and directional antennas with significant electrical and mechanical down-tilts will be utilized to focus the signal.<sup>35</sup> Riverside states that it will coordinate use of the spectrum as required with site-based incumbent licensees, geographic area-based co-channel licensees, and Coast Guard, and will immediately address and resolve any instance of harmful interference.<sup>36</sup> Finally, Motorola has determined that it can configure the system to use only one of the VPC channels as a required control channel, and use the remaining VPC channels only when no non-VPC channel is available.<sup>37</sup> In addition, MariTEL, pursuant to an agreement with Riverside regarding signal strength, expects to operate on these frequencies from sites that serve much of the offshore area of concern to the commenters.<sup>38</sup> We find that these measures will further reduce interference and the potential impact on maritime communications.

11. Finally, Coast Guard and RTCM oppose the application on the grounds that the three channels at issue are among those proposed for future use in an international "eNavigation"<sup>39</sup> system – a broadband ship-to-ship, ship-to-shore, and shore-to-ship communications system that integrates ship electronic navigation systems with shore based electronic navigation support systems – currently being considered by the International Maritime Organization (IMO), in coordination with the International Telecommunications Union (ITU).<sup>40</sup> While VPC spectrum may in the future be subject to redesignation for eNavigation, we agree with Motorola that Riverside's immediate public safety needs, currently over twelve million calls a year associated with over two million county residents and rising, outweigh the

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watts power for fixed stations using a 10 dBi transmitting antenna at 2 meters above sea level and 100 watts power for mobiles using 10-meter antennas. *See* Coast Guard Letter at 7.

<sup>34</sup> Description of Application at 7-8; Motorola Opposition at 17; MariTEL Opposition at 4; Supplement at 11-16.

<sup>35</sup> Description of Application at 7-8; Motorola Opposition at 17. Coast Guard's technical analysis does not reflect the use of directional antennas with significant electrical and mechanical down-tilts. *See* Coast Guard Letter at 7-8.

<sup>36</sup> Description of Application at 8; Supplement at 19.

<sup>37</sup> Supplement at 17-19. Motorola shall coordinate with Coast Guard to determine the control channel.

<sup>38</sup> *See* MariTEL Opposition to Late Filings at 4-5; Supplement at 11-12. RTCM and Coast Guard assert that Riverside's signal strength will exceed +5 dBu at the Mexican border. *See* RTCM Opposition at 5; Coast Guard Letter at 7. (Motorola disputes this assertion. *See* Motorola Opposition at 17.) Such a signal strength beyond the area licensed by the Commission for VPC operations is not permitted, *see* 47 C.F.R. § 80.773(c), regardless of any agreement between Riverside and MariTEL regarding signal strength within each other's licensed area. Riverside must operate its system accordingly.

<sup>39</sup> eNavigation is defined as the harmonized creation, collection, integration, exchange and presentation of maritime information onboard and shore by electronic means to enhance berth to berth navigation and related services, for safety and security at sea and protection of the marine environment. *See* Report to Maritime Safety Committee, IMO Sub-Committee on Safety of Navigation, 53rd session, Agenda item 22, NAV 53/22, 14 August 2007.

<sup>40</sup> *See* Coast Guard Letter at 9; RTCM Opposition at 5. In December 2008, the IMO Maritime Safety Committee adopted an e-Navigation 'Strategy.' The plan calls for an 'Implementation Plan' consisting of user needs and making use of Gap, Cost-Benefit and Risk Analysis, to be developed by 2012. The plan may set timetables for the initial phases of e-Navigation implementation and is expected that it will embody a framework for continuously assessing how best to meet user needs with evolving technology and the use of cost benefit analysis. *See* <http://www.ialathree.org/chapo/FAQS/FAQse-nav.pdf>. To facilitate future maritime broadband use, ITU at the recent World Radiocommunications Conference (WRC-12), modified Appendix 18 of the ITU *Radio Regulations*, "Table of transmitting frequencies in the VHF maritime mobile band" to designate channels 24, 84, 25, 85, 26, and 86 for digitally modulated emissions. *See* Final Acts World Radiocommunications Conference (WRC-12) at pages 138-142, Geneva, 23 January – 17 February 2012, Appendix 18 (REV. WRC-12).



speculative benefits of a future maritime service not yet approved or implemented.<sup>41</sup> We therefore will grant the instant application without prejudice to future rulemaking actions.

12. VPC stations are required to maintain a safety watch on marine VHF channel 16 under certain conditions<sup>42</sup> and afford priority to marine-originating communications.<sup>43</sup> Riverside states that MariTEL will meet these requirements on the spectrum that it retains in the partitioned area, and suggests that a waiver of those requirements therefore is not necessary.<sup>44</sup> We conclude that a waiver is necessary, for these requirements apply to each VPC licensee.<sup>45</sup> Given that both MariTEL and a site-based incumbent licensee will retain VPC spectrum to provide service to vessels in the waters off the partitioned area, it appears from the record before us that the channel 16 watch will be maintained and marine-originating communications will receive the same priority as they would in the absence of partitioning and disaggregation to Riverside. We therefore conclude that a waiver of these requirements is warranted under the circumstances presented.<sup>46</sup> In the event that the VPC spectrum retained by MariTEL proves insufficient to accommodate maritime needs in the region, however, the parties will be required to adopt other means to ensure against blocked or delayed marine-originating calls.<sup>47</sup>

13. *Conclusion.* For the reasons stated above, we will grant the instant application. We recognize the importance of interference-free maritime communications. We do not believe, however, that the record before us demonstrates that Riverside's proposed operations pose a sufficient interference threat to warrant denying the request. The request is granted on the express conditions that no interference is caused to current or future marine communications, including but not limited to AIS and eNavigation operations; and that, if necessary, Riverside will exercise its best efforts to adjust its operations in coordination with the maritime community so that the public safety needs of both Riverside and the maritime community can be accommodated.

14. IT IS ORDERED, pursuant to Sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), that the waiver request filed by County of Riverside on May 19, 2009 in connection with application FCC File No. 0003743672 IS GRANTED ON THE CONDITIONS set forth in paragraph 13, and that application FCC File No. 0003743672 SHALL BE PROCESSED consistent with this *Order* and the Commission's Rules.

15. IT IS FURTHER ORDERED that the Petition to Dismiss or Deny, or in the alternative Section 1.41 Request filed on June 10, 2009 by Environmental LLC, Verde Systems LLC, Telesaurus Holdings GB LLC, Intelligent Transportation & Monitoring Wireless LLC, and Skybridge Spectrum Foundation IS DENIED.

16. IT IS FURTHER ORDERED that the request for extension of time filed on May 29, 2009 by OWA, Inc. IS DISMISSED AS MOOT and the request for extension of time filed on June 9, 2009 by the Radio Technical Commission for Maritime Services IS GRANTED.

17. IT IS FURTHER ORDERED that the request for clarification filed on October 12, 2011 by Motorola Solutions, Inc. IS DENIED.

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<sup>41</sup> Motorola Opposition at 20.

<sup>42</sup> See 47 C.F.R. § 80.303.

<sup>43</sup> See 47 C.F.R. § 80.123(b).

<sup>44</sup> See Description of Application at 7-8.

<sup>45</sup> See *PacifiCorp Order*, 24 FCC Rcd at 5799 n.35.

<sup>46</sup> *Id.* at 5799 ¶ 9.

<sup>47</sup> *Id.*

18. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau